IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 21 of 2002
with
CIVIL APPLICATION No 24 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

I.C.I.C.I. BANK LTD.
Versus
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Appearance:
1. COMPANY PETITION No. 21 of 2002
Mr SN SOPARKAR, Sr. Advocate with Mr Sandeep Singhi
and Mr Jayesh L Odedra of A & M & S SHROFF CO.
for Petitioner No. 1
..... for Respondent No. 1
MR DN PATEL for Respondent No. 1
2. CIVIL APPLICATION No. 24 of 2002
PARTY-IN-PERSON for Petitioner No. 1
A & M & S SHROFF CO. for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/03/2002

ORAL JUDGEMENT

This is a petition filed by ICICI Bank Limited under Sections 391 to 394 of the Companies Act, 1956 to obtain sanction of this Court to the arrangement embodied in the Scheme of Amalgamation of ICICI Limited (hereinafter referred to as `ICICI'), ICICI Capital Services Limited (hereinafter referred as "ICICI Capital") and ICICI Personal Financial Services Limited (hereinafter referred to as "ICICI PFS") [all the three Companies are hereinafter collectively referred as the "Transferor Companies"] with ICICI Bank Limited (hereinafter referred to as "ICICI Bank" or "the Transferee Company" or "the petitioner-Company").

2. As the name itself suggests, the petitioner-Company is a banking Company, a private sector commercial bank. ICICI Bank, an affiliate Company of ICICI, offers products and services which largely complement the products and services offered by ICICI and other Transferor Companies. The ICICI group, which comprises ICICI, its subsidiaries and other affiliate Companies, is a diversified financial services group. ICICI was formed in 1955 at the initiative of the World Bank, the Government of India and representatives of Indian industry. It was created to develop a financial institution for providing medium term and long term project financing to Indian businesses. With liberalization of the financial sector in India from 1991 onwards, ICICI diversified in financial services. Particulars about the activities ICICI and the other Transferor Companies are given in para 16 of the petition.

ICICI Bank is a wholly owned subsidiary of ICICI. In conformity with the directives of the Reserve Bank of India, ICICI had reduced its shareholding in ICICI Bank to approximately 46% of the equity share capital. In view of the benefits of transformation into a bank and the Reserve Bank of India's pronouncements on universal banking, ICICI explored various corporate structuring alternatives for its transformation into a universal bank. ICICI Bank also identified a large capital base and size and scale of operations as key success factors in the Indian banking industry and, therefore, ICICI and ICICI bank decided to go in for amalgamation of the two entities in view of ICICI's significant shareholding in ICICI Bank and the existing strong business synergies between the two entities. As a part of this amalgamation, ICICI Capital and ICICI PFS were also decided to be amalgamated with ICICI Bank.

3. ICICI appointed JM Morgan Stanley Private Limited and ICICI Bank appointed DSP Merrill Lynch Limited as their advisors to undertake valuation of the shares of the Companies and recommend a share exchange ratio to the Board of Directors of each Company. The advisors recommended the share exchange ratio that against 2 ICICI shares, one share of ICICI Bank be issued. The Board of Directors of the Transferor Companies and of the Transferee Company approved the scheme of amalgamation on 25.10.2001. ICICI Bank having its Registered Office in Baroda within the territorial jurisdiction of this Court preferred Company Application No. 360 of 2001. By order dated 19.12.2001, the Court directed ICICI Bank to convene the meeting of the equity shareholders with an observation that since the amalgamation was not to affect the interest of the creditors of the petitioner-Company, no meeting of the creditors was required to be called for. ICICI Bank sent notices alongwith the scheme, explanatory statement, proxy and information statement to the equity shareholders and ADR holders for the meeting convened on 25.1.2002. The advertisement of the notice for convening the meeting was also published in "Business Standard" and "Sandesh" on 1.1.2002. As scheduled, the meeting of the equity shareholders was held at Baroda on 25.1.2002. As per the report dated 29.1.2002 of the Chairman appointed for the meeting, the equity shareholders representing 96.60% in number of equity shareholders and 99.49% in value sanctioned the scheme of amalgamation. The present petition thereupon came to be filed on 30.1.2002 by ICICI Bank for obtaining sanction to the scheme of amalgamation.

4. On 31.1.2002, this Court admitted the petition and directed the notice of hearing to be advertised. Accordingly, the notice of hearing of this petition has been advertised in "Business Standard" and "Sandesh" on 4.2.2002 as stated in the affidavit dated 19.2.2002 of Mr Anil C Dave. The petitioner-Company also sent individual notices to the equity shareholders and ADR holders regarding the hearing of this petition.

5. In response to the aforesaid notices, the responses/objections were received from the following persons :-

Sr. No.	Name of the Objector	Particulars of Objections

1.	Mr B Srinivas Baliga	No objection to reverse merger Share Exchange Ratio.
2.	Ms Beena Agrawal	Queries raised in respect of different schemes i.e. FDRs, Children Growth Fund, Tax Saving Bonds, etc.
3.	Ms C. Pappa Ammal	Concern shown over dividend income on merger (future).
4.	Mr Tehmtan Davar	Request made that Head Office of merged entity to continue in Mumbai.
5.	Mr Janak Mathurdas	Objection to the share exchange ratio.
6.	Mr HP Gidwani	Written to RBI based on wrong reporting in newspaper (26.1.2002) that two meetings were held (Ahmedabad and Vadodara).
7.	Mr Rajiv Agarwal	Petition filed by ICICI Bank be dismissed in view of the criminal complaint filed before Chief Judicial Magistrate, Jaipur.
8.	Mr Mukesh Kumar	Company Application filed by ICICI Bank be dismissed in view of Criminal Complaint filed by Mr Rajiv Agarwal at Jaipur.
9.	Mr Sureshchandra V. Parekh	Merger not to be sanctioned till the time grievances of Mr Parekh are redressed.
10.	Mr DJ Shah	-Objection to the valuation - apprehensions raised.

Mr DJ Shah subsequently appeared before this

Court and he withdrew his objections.

The above objections were sent to the Company or to the solicitors of the petitioner-Company.

6. The Court has perused the objections. Most of them are vague and do not raise any specific objection which could be taken into account by a Court of law. One Mr Rajiv Agarwal has raised an objection to the proposed amalgamation on the ground that he has filed a criminal complaint in the Court of Chief Judicial Magistrate, Jaipur in respect of dishonour of cheques which were drawn on Calcutta Branch of ICICI Bank.

The learned counsel for the petitioner-Company has pointed out that the criminal proceedings filed by the said gentleman are challenged in a quashing petition filed before the Hon'ble High Court of Rajasthan at Jaipur and that as per the letter dated 21.1.2002 received from advocate Mr Anant Bhandari, on 9.1.2002 the Rajasthan High Court has issued notice and granted ad-interim stay of further proceedings pending before the lower Court. The learned counsel further states that further hearing is now adjourned to 13.3.2002 and the ad-interim stay is also extended.

7. The only objector who has appeared before this Court in support of his objections is Mr SV Parekh. His major grievance is that before the merger of Bank of Madura Ltd. with ICICI Bank, he had some grievances against Bank of Madura Ltd. and that he has been fighting for his legitimate grievances for the last about two years. It is submitted that the amalgamation should not be sanctioned till all his grievances are redressed.

The learned counsel for the petitioner-Company points out from the reply that the said objector had earlier filed a complaint before the Banking Ombudsman. After the petitioner-Company filed its reply before the Banking Ombudsman, the objector approached the Consumer Forum under the Consumer Protection Act and, therefore, the Banking Ombudsman disposed of the complaint before it on 13.2.2001 on the ground that the objector had already approached the Consumer Forum. The matter is, therefore, now pending before the Consumer Forum at Ahmedabad being Consumer Complaint No. 1053 of 2000.

It is further submitted that the objector has made a claim of Rs.66,435-18 and other vague claims which are subject matter of the complaint before the Consumer Forum. It is submitted that the said grievance cannot be

ventilated in the present proceedings as the same have nothing to do with the issue of amalgamation, because even if the objector were to succeed before the Consumer Forum, the order of Consumer Forum can be enforced against the petitioner-Company because the petitioner-Company is the transferee Company and there is no question of any alleged liability of the petitioner-Company being affected by the proposed amalgamation.

8. As stated above, Mr DJ Shah had earlier filed objections, but at the hearing of the petition, he appeared in person and made it clear that he was withdrawing all his objections. Even so he made a passing reference to the previous amalgamation of Bank of Madura Ltd. with the ICICI Bank without any orders of this Court. Mr Soparkar thereupon drew the attention of the Court to the provisions of Section 44A of the Banking Regulation Act, 1950 under which amalgamation of two banking Companies is to be done with the sanction of the Reserve Bank of India which was duly obtained.

The learned counsel for the petitioner-Bank has also referred to the letters received from the two shareholders conveying their consent to the scheme of amalgamation. It is not necessary to make reference to those letters or the letters requesting for copies of the petition.

9. A perusal of the aforesaid letters/objections does not indicate any objection of any shareholder which would fall within the parameters for exercise of jurisdiction of this Court under Section 391 to 394 of the Companies Act, 1956 as laid down by the Apex Court in Miheer H Mafatlal Vs. Mafatlal Industries Ltd., AIR 1997 SC 506 about the scope of power of the Company Court under Sections 391 and 394 of the Companies Act. The principles are summarized by the Apex Court itself in the following terms :-

"In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged :

1. The sanctioning Court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated

by Section 391(1)(a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391, sub-section (2).

3. That the concerned meetings of the creditors or members of any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391, sub-section (1).

5. That all the requisite material contemplated by the proviso to sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirement of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction."

Applying the aforesaid principles, it is clear that the proposed amalgamation cannot be faulted on the basis of the grievances being made by objector-Mr SV Parekh and/or other persons who have written letters.

10. As far as the objector who has appeared as party-in-person is concerned, his shareholding in ICICI Bank is about 505 shares and about 30 shares in ICICI. Looking to the overwhelming majority with which the equity shareholders have approved the scheme of amalgamation and looking to the valuation reports of the advisers of repute suggesting the share exchange ratio of one equity share of ICICI Bank of Rs.10/- each fully paid up for two exiting equity shares of ICICI of Rs.10/each fully paid up, it cannot be said that the share exchange ratio suffers from any illegality. As per the settled legal position, in such matters the Court is not to sit in appeal over the decision of the equity shareholders. In any case, nothing is pointed out on record to indicate that the share exchange ratio suggested by the advisors and adopted by the two Companies is unreasonable or illegal.

11. As far as the objection of Mr Parekh is concerned, it appears that he had some grievances against Bank of Madura Ltd. which has thereafter merged with ICICI Bank, the transferee Company herein. The amount

involved is about Rs.66,435-18 and other incidental and ancillary reliefs which are the subject of Consumer Complaint No. 1053 of 2000 pending before the Consumer Forum at Ahmedabad. Looking to the nature of the said grievances, which are in respect of calculation of interest on stock invests which the objector had purchased from Bank of Madura Ltd., they cannot come in the way of the amalgamation of the aforesaid three Companies with the petitioner-Company-ICICI Bank. In case if the objector approaches Consumer Forum for expeditious hearing of the complaint, this Court has no manner of doubt that the Consumer Forum will give due consideration to such request and take up the complaint for expeditious hearing and disposal. This direction is given in view of the fact that the learned counsel for the petitioner-Company states that the petitioner-Company has already filed its reply and that it will extend utmost co-operation for expeditious hearing and disposal of the complaint before the Consumer Forum.

12. Coming to the stand of the Central Government, Ms PJ Davawala, learned Additional Standing Counsel for the Central Government has placed on record a copy of the letter dated 26.2.2002 from the Registrar of Companies, Gujarat State stating that the petition has been examined by the Central Government and that it has been decided to leave the matter to this Court to decide on merits subject to the following observations :-

(a) As the resolution for increase in Authorised Share Capital of the Transferee Company forms part of the scheme, it needs compliance with the provisions of Section 97 of the Companies Act, 1956.

(b) As the Company has proposed to increase the number of directors from 12 to 21, the compliance with the provisions of Section 258 of the Companies Act, 1956 would be necessary.

13. As far as objection (a) is concerned, it is pointed out by the learned counsel for the petitioner-Company that clause 20(a) of the proposed Scheme read with Schedule I to the Scheme takes care of the first objection raised by the Central Government.

As far as objection (b) is concerned, the learned counsel for the petitioner-Company points out that the same is taken care of by clause 20(b) and clause 21 of

the proposed Scheme read with Schedule II, Item No. 7 thereto.

14. Having perused the relevant provisions of the proposed Scheme, it is clear that the Scheme itself contemplates that upon sanction to the Scheme, clause V of the Memorandum of association of the petitioner-Company i.e. the Transferee Company shall, without any further act, instrument or deed, be and stand altered, modified and amended. Schedule I to the scheme seeks to delete the existing clause V and replace it with the new clause to the effect that the authorised capital of the Company shall be Rs.2,250 Crores divided into 190 Crores shares of Rs.10/- each and 350 shares of Rs. 1 Crore. Hence, the first objection raised by the Central Government is taken care of.

15. As far as the second objection is concerned, clause 20(b) read with clause 21 of the scheme reads as under :-

"20(b) The Articles of Association of the Transferee Company shall without any further act, instrument or deed, be and stand altered, modified and amended pursuant to Sections 31 and 394 and other applicable provisions of the Act in the manner set forth in Schedule II hereto.

21. Upon the coming into effect of this scheme, the Board of Directors of the Transferee Company shall be reconstituted in accordance with the provisions of the Act and the Banking Regulation Act, 1949. Provided that, subject to the approval of the Reserve Bank of India, the maximum number of Directors on the Board of Directors shall be increased to 21 (exclusive of the nominee director appointed by the Government of India and the director as may be nominated pursuant to the trust documents in relations to the issue of debentures or bonds of the Transferee Company and/or the Transferor Companies)."

(emphasis supplied)

Para 7 of Schedule II to the scheme provides for deleting Article 126 and replacing it with the following Article 126 :-

"126. Until otherwise determined by a General

Meeting, the number of Directors shall not be less than three or more than 21 excluding the Government Director (referred to in Article 128A) and the Debenture Director (referred to in Article 129 (if any)."

(emphasis supplied)

In view of the above, it is clear that the second objection is also taken care of.

As far as Section 258 referred to in the letter of the Registrar of Companies is concerned, the same reads as under :-

"258. Subject to the provisions of sections 252, 255 and 259, a company in general meeting may, by ordinary, resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles."

Since the Scheme itself provides for the aforesaid amendment to the Articles of Association and the Scheme is approved by an overwhelming majority of more than 96% of the equity shareholders, there is no justification for requiring the Company to follow the procedure all over again for increasing the number of Directors.

16. However, Section 259 provides that in the case of a Company which came into existence after 21.7.1951, the increase in the number of Directors beyond 12 shall not have any effect unless approved by the Central Government and shall become void if, and in so far as, it is disapproved by the Government.

Apropos the aforesaid statutory provision, the learned counsel for the petitioner-Company submits that as per the decision of this Court in Rangkala Investments Ltd., In re and Gujarat Organics Ltd., In re., (1997) 89 Comp.Cases 754 the provisions of Sections 391 to 394 of the Companies Act constitute a complete code and are intended to be in the nature of a "single window clearance".

17. Having carefully gone through the aforesaid decision, it appears that in the aforesaid decision, this Court considered the decisions of this Court in Manekchowk and Ahmedabad Manufacturing Co. Ltd., In re (1970) 40 Comp.Cases 819 and in P.M.P. Auto Industries Ltd., In re (1994) 80 Comp.Cases 289 and adopted the

principles laid down therein that Section 391 invests the Court with powers to approve or sanction a scheme of amalgamation/arrangement and in doing so, if there are any other things which, for effectuation, require a special procedure to be followed - except reduction of capital - and the Court has power then while sanctioning the scheme itself, it would not be necessary for the Company to resort to other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme, which is sanctioned by the Court. Not only is Section 391 of the Companies Act, a complete code, but it is intended to be in the nature of a "single window clearance" system to ensure that the parties are not put to avoidable, unnecessary and cumbersome procedure of making repeated applications to the Court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness or feasibility has been judged by the Court.

18. It is true that Section 259 requires sanction of the Central Government. However, in the instant case, the Central Government has already been served and has responded to the notice issued by this Court through the Registrar of Companies, Gujarat State. Neither the officer of the Central Government nor its learned standing counsel have contended that the Central Government would not have accorded approval to the application of the Company for increasing the number of Directors. In fact, the letter of the Registrar of Companies states that it has been decided to leave the matter to this Court.

In the facts and circumstances of the case, even otherwise, there is no reason for the Central Government not to accord approval to the increase in the number of Directors of the Transferee Company when its capital is being substantially extended and three transferor Companies are merging into one Transferee Company which the petitioner before this Court.

19. Clause 21 of the Scheme as also the Banking Regulation Act would require the approval of the Reserve Bank of India. Hence, the sanction being granted by this Court is conditional upon the Reserve Bank of India granting the requisite statutory approvals.

20. Since the Transferor Companies are having their Registered Offices in the State of Maharashtra, this Court is not required to consider the other formalities

which are applicable to the Transferor Companies, but it is made clear that the sanction being granted by this Court in the present petition is subject to the sanction being granted by the Bombay High Court in respect of the scheme filed by the Transferor Companies and also subject to approval being granted by the Reserve Bank of India in accordance with the relevant applicable statutory provisions.

21. In the result, the Scheme of Amalgamation of ICICI Limited, ICICI Capital Services Limited, and ICICI Personal Financial Services Limited (three "Transferor Companies") with ICICI Bank Limited (the Transferee Company) is sanctioned and the prayers in terms of 30 (a) to (f) are hereby granted.

22. The petitioner Company shall pay the fees of the learned Additional Standing Counsel for the Central Government which are quantified at Rs.3,500/- within one month from today.

23. The petition accordingly stands disposed of.

24. In view of the above order, Civil Application No. 24 of 2002 does not survive and is accordingly disposed of.

(M.S. Shah, J.)

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